

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 30, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KRISTINA T. STRONG,
Individually and as Administrator of
the Estate of Matthew W. Strong,
deceased,

Plaintiff,

v.

HONEYWELL INTERNATIONAL,
INC., and PNEUMO ABEX, LLC,

Defendants.

NO: 2:20-CV-136-RMP

ORDER GRANTING IN PART
DEFENDANT HONEYWELL'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT RE
CONSPIRACY AND BREACH OF
WARRANTY

BEFORE THE COURT is Defendant Honeywell International Inc.'s
("Honeywell") Motion for Partial Summary Judgment, ECF No. 56.

The Court heard oral argument on August 27, 2021, via video conference.
Erin Fraser presented argument on behalf of Honeywell on the Motion for Partial
Summary Judgment. John Steffan responded on behalf of Plaintiff Kristina T.
Strong. The Court has reviewed the motion, heard oral argument, and is fully
informed.

ORDER GRANTING IN PART DEFENDANT HONEYWELL'S MOTION FOR
PARTIAL SUMMARY JUDGMENT RE CONSPIRACY AND BREACH OF
WARRANTY ~ 1

1 This is an asbestos case brought by Kristina Strong, individually and as
2 Administrator of the Estate of Matthew T. Strong. Decedent Matthew Strong
3 developed peritoneal mesothelioma which Plaintiff alleges was caused by exposure
4 to asbestos-containing automotive friction products, including Bendix brand brakes
5 manufactured by Honeywell. *See* ECF Nos. 30, 80 at 1–2.

6 Plaintiff’s Second Amended Complaint asserts liability based upon the
7 theories of product liability; common law negligence; negligent undertaking; strict
8 product liability under Section 402A and 402B of the Restatement of Torts (and
9 RCW 7.72 *et. seq.*, as may be applicable to certain supplier-defendants); breach of
10 warranty (RCW 62A); and conspiracy. ECF No. 30 at 4.

11 Honeywell moved for summary judgment on Plaintiff’s claims based upon
12 (1) failure to warn; (2) conspiracy; and (3) breach of warranty. *See* ECF No. 56.

13 A court may grant summary judgment where “there is no genuine dispute as to
14 any material fact” of a party’s prima facie case, and the moving party is entitled to
15 judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*,
16 477 U.S. 317, 322–23 (1986). A key purpose of summary judgment “is to isolate
17 and dispose of factually unsupported claims.” *Id.* at 324. The moving party bears
18 the burden of showing the absence of a genuine issue of material fact, or in the
19 alternative, the moving party may discharge this burden by showing that there is an
20 absence of evidence to support the nonmoving party’s prima facie case. *Id.* at 325.

1 With respect to Plaintiff's conspiracy claim, Honeywell contends that
2 "Plaintiff cannot show any agreement among the defendants, much less one
3 contemplating a nefarious purpose." ECF No. 56 at 8 (citing *Corbit v. J.I. Case Co.*,
4 70 Wn. 2d 522, 528, 424 P.2d 290 (1967)) ("[A]n actionable civil conspiracy exists
5 if two or more persons combine to accomplish an unlawful purpose or combine to
6 accomplish some purpose not in itself unlawful by unlawful means."). Plaintiff did
7 not respond to Honeywell's motion to the extent it seeks dismissal of Plaintiff's
8 claim based on conspiracy. See ECF No. 80.

9 With respect to Plaintiff's breach of warranty claim, Honeywell contends that
10 Plaintiff has not established a prima facie case because "[t]here is no evidence in the
11 record to suggest that Honeywell made an express warranty to Decedent, nor is there
12 any evidence that any Bendix product purchased by Decedent or his father were
13 unsuitable or unfit for their intended purpose." ECF No. 56 at 8. Plaintiff did not
14 respond to Honeywell's motion to the extent it seeks dismissal of Plaintiff's claim
15 based on breach of warranty. See ECF No. 80.

16 Given Plaintiff's non-response, the Court finds that Honeywell has shown that
17 there is an absence of evidence to support a prima facie case for Plaintiff's claims
18 based on conspiracy and breach of warranty. Accordingly, the Court finds that
19 summary judgment is appropriate and Plaintiff's claims based on conspiracy and
20 breach of warranty shall be dismissed with prejudice.

1 This Order does not resolve Honeywell's Motion for Partial Summary
2 Judgment regarding Plaintiff's claim based on failure to warn. The Court will
3 resolve whether or not partial summary judgment is appropriate with respect to
4 Plaintiff's claim based on failure to warn by a separate and forthcoming order.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendant Honeywell International Inc.'s Motion for Partial Summary
7 Judgment, **ECF No. 56**, is **GRANTED IN PART** regarding Plaintiff's claims based
8 on conspiracy and breach of warranty only.

9 2. Plaintiff's claims based on conspiracy and breach of warranty are
10 **DISMISSED WITH PREJUDICE.**

11 3. Judgment shall be entered for Defendant Honeywell International Inc.
12 on Plaintiff's claims for conspiracy and breach of warranty only.

13 4. Defendant Honeywell International Inc.'s Motion for Partial Summary
14 Judgment on Plaintiff's claim based on failure to warn, ECF No. 56, remains
15 pending and will be resolved by a separate and forthcoming order.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order and provide copies to counsel.

18 **DATED** August 30, 2021.

19 s/ Rosanna Malouf Peterson
20 ROSANNA MALOUF PETERSON
21 United States District Judge